



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

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STATEMENT BY COUNCIL PRESIDENT ROGER BERLINER  
BEFORE THE BALLOT QUESTIONS ADVISORY COMMITTEE  
OF THE MONTGOMERY COUNTY DEMOCRATIC CENTRAL COMMITTEE

Friends and colleagues, I am Roger Berliner, president of the Montgomery County Council. On behalf of the entire Council, I am here to discuss Question B on this year's ballot. It reads:

"Shall the Act to modify the scope of collective bargaining with police employees to permit the exercise of certain management rights without first bargaining the effects of those rights on police employees become law?"

The Council urges this Committee, the Precinct Organization, and the Montgomery County Democratic Central Committee to recommend a YES vote on Question B. On July 19, 2011 the Council unanimously enacted Bill 18-11, and on August 1, 2011 County Executive Isiah Leggett signed it into law. The bill amends the "effects bargaining" provision of the police labor relations law. It makes the scope of bargaining with the union representing police employees consistent with the scope of bargaining with unions representing other County employees. This change was recommended by the Council's Organizational Reform Commission in its January 2011 report and by our outstanding Police Chief, Tom Manger.

Before summarizing the reasons for this change, I want to reaffirm in the strongest terms the Council's support for collective bargaining with police employees. Perhaps the best way to reaffirm this support – and to eliminate any confusion on this point – is to list the subjects of bargaining mandated by the police labor relations law as amended by the Council. These subjects are – and I quote:

- (1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;
- (2) Pension and retirement benefits for active employees only;
- (3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;
- (4) Hours and working conditions, including the availability and use of personal patrol vehicles;
- (5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective

- bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;
- (6) Matters affecting the health and safety of employees; and
  - (7) Amelioration of the effect on employees when the employer's exercise of rights listed in subsection (b) causes a loss of existing jobs in the unit.

These are the mandatory subjects of bargaining. Subsection (b) refers to employer rights, such as the right of management to "determine the services to be rendered and the operations to be performed." The key change in Bill 18-11 was to eliminate an open-ended requirement to bargain with the union over the effect on employees of any exercise of these employer rights.

For our community to be secure, our Police Chief must have the ability to manage his department effectively. In the attached responses to questions posed by Council staff in July 2011, Chief Manger showed how "effects bargaining" has repeatedly interfered with his capacity to implement basic management decisions to hold officers accountable and provide efficient resources to the public. In response to question #6, the Chief gave clear examples, including a three-year delay in implementing an electronic report writing system and the inability to require officers to use email. As the Chief said, "The Department is still required to provide printed communications with its officers since FOP members are not required to read or maintain an email account with the County."

"Effects bargaining" was included the police labor relations law enacted in 1982. Given the problems it has created, it is not surprising that there is no such provision in the subsequent labor relations laws for other County employees, or that the overwhelming majority of such laws for employees of other counties and the State have no such provision either.

That is why the Council unanimously enacted Bill 18-11 – a law that eliminates "effects bargaining" but retains the full list of mandatory subjects of bargaining. We urge you to recommend a YES vote on Question B.

## **Police Chief Manger's Responses to Questions from Council Staff – July 2011**

### **Question #1:**

Please give examples of issues that could have been the subject of "effects bargaining".

### **Answer #1:**

Every statutory employer right as defined by statute 33-80 (b) is subject to effects bargaining and is a mandatory subject of bargaining. Some examples are:

- PacketWriter
- Mobil AFIS
- AVL
- E-citation
- Holsters
- Rifle sights
- SOP's
- Directives
- Trainer/Trainee relationships
- Mandatory use of e-mail
- Proficiency advancements and time in grade
- Uniforms at In-Service training
- PPV reassignment
- Evidence Technician work hours
- MC Time/Telestaff

### **Question #2:**

What is a typical timeline for negotiation and impasse procedures?

### **Answer #2:**

Typically, a minor matter will take between two weeks and 90 days to resolve without any impasse being declared by either party.

A more significant matter (as determined by either party) can take up to two years or more to bargain.

- \* If impasse is declared an arbitrator must be selected and scheduled. This typically takes at least two months.
- \* A mediation/arbitration proceeding can take between one and three days.
- \* The decision may not be rendered for weeks following the proceeding.

**Question #3:**

What costs are associated with negotiations and impasse procedures?

**Answer #3:**

During bargaining a negotiations team from each party is designated and will vary in size based on the complexity of the issue. The employers team of representatives may also include OHR employees and a member of the County Attorney's office. The range of representatives varies between two and five for normal negotiations. All FOP members attending these bargaining sessions are granted administrative leave (if not term bargaining this should be taken from the FOP leave bank).

Arbitrator costs vary and range between \$425 - \$1,500 per day. This includes the time spent draft their opinion.

**Question #4:**

The "effects bargaining" provision only applies to the exercise of a management right that has an effect on the members of a bargaining unit. Can you give us an example of a management right that you exercised without bargaining with the FOP because it did not have an effect on the members of the bargaining unit? If so, did the FOP accept this determination? If not, how was the dispute resolved?

**Answer #4:**

- November 2010 Department recognized a personnel shortage of officers in the 3<sup>rd</sup> District due to various factors including officers deployed on military leave, on light duty or on administrative leave.
- Needed to supplement staffing levels to maintain service to the community and reduce crime.
- November 29 – memo sent out requesting volunteer officers to be temporarily reassigned to the 3<sup>rd</sup> District.
- No notice was given to the FOP because this was a voluntary program.
- FOP demanded to bargain this matter on Dec 13<sup>th</sup>.
- Due to the Department's need to address the shortage, planning continued with the officers who volunteered to be transferred to the 3<sup>rd</sup> District. FOP objected to this action in communication with us on January 14, 2011.
- Communications between the Department and FOP continued while officers began their voluntary redeployments to the 3<sup>rd</sup> District starting January 30.
- Agreement with FOP was reached on March 4, 2011. By this time, several of their originally transferred officers had completed their assignment and returned to their previous duty assignment.
- MCPD was at risk of being charged with a PPC if no agreement was reached.

**Question #5:**

Can you compare the exercise of management rights as applied to MCGEO (within MCPD) as compared to the FOP?

**Answer #5:**

MCGEO Process: There are several units within MCPD that are made up of primarily MCGEO members, such as ASD, ECC, Crime Lab and Security. When ECC, a division comprised of primarily MCGEO employees, needs to implement an Operational Change, it is done so immediately and a copy of the change is placed in the MCGEO mailbox for review. If the change is a mandatory subject of bargaining, they discuss it at LMRC and then notice the Union of the proposed change. For example, Management may send a copy of the SOP with the proposed revision(s) to MCGEO and MCGEO has 30 days to respond. They can either accept the changes or inform the Department of clarifications or issues. Once the issues are resolved the Department has to send Notice of Implementation to MCGEO – as long as the Union is satisfied with the change, it takes effect. Generally, this procedure takes approximately 3-4 weeks to complete.

Examples:

- 2010 Management exercised its management right to change the operating hours of the Chemistry Lab. The Union was noticed, provided input and the hours were changed.
- 2008 Management exercised its right to change the work schedules and hours of ASD employees. The Union was noticed, provided input and the hours were changed.

FOP Process: In order to exercise a management right, the department's belief is any bargaining deemed necessary would fall under "Effects Bargaining". The department needs to notify the FOP and allow them an opportunity to accept it or demand to bargain. The bargaining process can last days or years.

Examples

- 2011 the Department exercised a restructuring due to budgetary lack of funds. The FOP was notified and quickly agreed to the changes in one day.
- Mobile AFIS devices were bargained beginning in October 2007 and an agreement was reached in March 2008.
- The Department uses SOP's (Standard Operating Procedures) as a management right to establish procedures not covered by its Rules and Regulations under the Department Directive system. The Department entered into bargaining of the 1<sup>st</sup> District's SOP with the FOP following a Prohibited Practice Charge filed with the Permanent umpire in October 2007 and reached agreement on that one SOP in September 2009.
- The Departments Directive System

**Question #6:**

Can you give an example of where you exercised a management right to increase effectiveness and efficiency of operations of the Department and the resulting negotiations diminished your ability to hold officers accountable, implement effective policy or provide efficient resources to the public?

**Answer #6:**PacketWriter

- The Department sought to implement PacketWriter in an effort to improve its efficiency and effectiveness in operations by converting the departments report writing system to an electronic version instead of using paper report forms and mandating that officers use only PacketWriter. The FOP made a demand to bargain PacketWriter in February 2006. As agreement was not reached to mandate PacketWriter use until May 2009. Prior to the May 2009 date, officers were allowed to write reports in either the electronic format or using the old paper forms. This created record keeping challenges and additional costs to the Police Department.

AVL

- The Department sought to implement an Automatic Vehicle Locator system which allows ECC to identify the location of police vehicles equipped with computers. The negotiations resulted in an agreement where data from this system will not be used in any disciplinary action or internal investigation or administrative hearing board proceeding concerning any FOP member.

Email

- The mandatory use of email has been sought by the Department in the past. Negotiations with the FOP resulted in an agreement on email use. However, no agreement for the use of mandatory use of email has ever been reached and its use remains voluntary for its members. The Department is still required to provide printed communications with its officers since FOP members are not required to read or maintain an email account with the County.

**Question #7:**

This is a committee that recognizes the importance of collective bargaining. If effects' bargaining is eliminated, won't important subjects of bargaining be impacted?

**Answer #7:**

No, because the County law and the collective bargaining agreement with the FOP requires bargaining over salary, wages, pension benefits, retirement, hours and working conditions,

grievance process and health and safety issues. Many aspects of “effects bargaining” are covered under the collective bargaining agreement already.

- directives
- transfers
- promotions
- discipline
- hours and working conditions (scheduling)
- evaluating employees

In addition, the Department and FOP have established joint committees to work on solutions of issues of mutual concern that arise. Examples include

Health and Safety Committee

LMRC

Training Committee

Awards Committee

Collision Review Committee